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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/714,510 | 11/14/2003 | Thomas M. Sauter | KCOS121897 | 9834 |
| 26380 7590 11/17/2008 CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC 1420 FIFTH AVENUE SUITE 2800 SEATTLE, WA 98101-2347 | | | | |
| EXAMINER | | | | |
| VANAMAN, FRANK BENNETT | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 3618 | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/714,510

Applicant(s)

SAUTER, THOMAS M.

Examiner

Frank B. Vanaman

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 19-39 is/are pending in the application.
- 4a) Of the above claim(s) 4-14, 21, 22 and 31 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24-26 and 29 is/are allowed.
- 6) ☒ Claim(s) 1, 17, 19, 23 and 32-39 is/are rejected.
- 7) ☒ Claim(s) 2, 3, 15, 16, 20, 27, 28 and 30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Final Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 24, 2008 has been entered.

Status of Claims

2. Claims 1-17 and 19-39 are pending, with claims 31-39 being newly added. Claims 4-14, 21 and 22 were previously withdrawn from consideration.

3. Claim 31 modifies claim 1 and recites that the end of the toe strap that it movable is configured to travel twice the distance compared to the end of the ankle strap that is movable. This feature is not illustrated in the figure associated with the species (figure 3), nor is it disclosed in the portion of the specification (page 9, line 21 through page 13, line 2) directed to the elected species. As such, claim 31 is withdrawn from consideration as not being directed to the elected species.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1, 17, 19, 23, 32-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Bumgarner (US 5,758,895, cited previously). Bumgarner teaches a binding system for attaching a boot to a base plate (1, 2) including a forwardly mounted toe strap (6) with a ratchet and pawl fastener (61) and ladder (62) connected to the movable end, provided as a portion thereof, a movable end (proximate 18), and being connected at respective lateral and medial sides of the base plate (note relative locations of 16, 18), the toe strap movable end being connected to the baseplate through a linkage (18, 8, 81, 10), and an other than forwardly mounted ankle strap (4) with a ratchet and pawl fastener (41) and ladder (42) connected to the movable end, provided as a portion thereof, a movable end (proximate engagement of linkage element 20), and being connected at respective lateral and medial sides of the base

plate (note relative locations of 14, 20), a linkage (8) connecting the movable ends (20, 18) of the respective straps, a strap tension producing fastener (22, 221, 24) located on a first strap (in this case, 4, note figure 4, for example), which tensions the first strap (see figures 4, 5, 6), at which condition the linkage causes the other strap (6) to be tensioned (due to the engagement of 8 at 10, 81 and the action of the fastener 22, 221, 24), and wherein operation of the fastener to release the tension on the first strap, the tension is released in the second strap as well, wherein travel of the ankle end of the linkage (8) causes travel of the toe end of the linkage (the respective ends being functionally connected), the binding system being connected to the base plate at least in four locations (e.g., 20, 12; 10, 18; 16; 14).

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. Claims 38 and 39 are rejected under 35 USC §103(a) as being unpatentable over Couderc et al. (US PGPub 2001/0009320) in view of De Bortoli et al. (US PGPub 2004/0061311, having an effective filing date of Dec. 22, 2000).

Couderc et al. teach a binding strap device for use with a binding system designed to hold a boot (2, phantom) on a snowboard (3, 9) and having a base-plate (4, 7), the strap element (figure 7) including toe and ankle straps (103, 102) each having a movable end (left most end of 103, 102, figure 7) each end being connected to one or more linkages (in this case, at least element 106), wherein the movable ends are allowed to travel, and a strap-tension-producing fastener (104, 105) which is located on an opposite end or opposite ends of one of the toe and/or heel strap portions (at 101), and wherein the operation of the fastener to tension one or the other straps causes a tension to be produced in the other of the straps, and wherein operation of the fastener to release tension in one of the straps causes tension to be released in that strap and the other of the straps, wherein travel of the movable end associated with one or the other of the straps causes motion of the linkage (106) connected to the other strap, the linkage constituting one or more cables (see paragraphs 0073-0077).

The examiner notes that the alternative strap portion taught by the illustration of figure 7 is understood to be anticipated by Couderc et al. as usable with the base-plate and boot as shown in figures 1-3, as such, while figure 7 fails to explicitly illustrate the boot and base-plate, it is understood that Couderc et al. anticipate a binding device which includes both the alternative strap as well as the boot and base-plate.

As regards each of the toe and heel straps having first and second ends, to the breadth this limitation is actually recited in the claims, each strap element (102, 103) has a pair of ends: strap element 102 has one end at the left most portion (as seen in the figure) of 102, corresponding to one of a lateral or medial end, and one at 101 or, alternatively one end at the intersection of 102 and 101, corresponding to the other of the lateral or medial end; similarly, strap element 103 has one end at the left most portion (as seen in the figure) of 103 corresponding to one of a lateral or medial end, and one at 101, or, alternatively one end at the intersection of 103 and 101, corresponding to the other of the lateral or medial end.

The reference to Couderc et al. fails to specifically teach that the connection of the binding to base plate is made at least at four locations. De Bortoli et al. teach a means (5b) for connecting a strap portion (22, 23, 24) to a base plate (2, 3b) wherein the connection includes a pair of elements (one labeled 17, the other unlabeled), resulting in the connection of the element to the base plate at two locations - where the element 17 contacts the base plate-carried support 19 and where the unlabeled element parallel to element 17 contacts the base plate-carried support 19, the connection points spaced by the diameter of the support element. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the connection proximate Courderc et al's element 105 with a dual element as taught by De Bortoli et al. for the purpose of using an element having a greater degree of flexibility, allowing easier initial adjustment.

Allowable Subject Matter

8. Claims 2, 3, 15, 16, 20, 27, 28 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 24-26, 29 are allowed.

Response to Comments

10. Applicant's comments, filed with the amendment and request for continued examination, have been carefully considered. As regards the reference to Couderc et al. as applied by itself, the examiner agrees that this reference cannot meet the claims as currently amended. Note the application of the reference to DeBortoli et al. as applied in combination with Couderc et al. against newly added claims 38 and 39. Also note that applicant's claims 1, 17, 19, 23 and 32-39 are broad enough to be rejected in anticipation by the previously cited reference to Bumgarner.

11. As evidence of unobviousness, applicant has provided a number of exhibits for the examiner to consider. Initially, the examiner notes that (1) evidence of unobviousness cannot be effective against an anticipation rejection and (2) the submission constitutes neither an affidavit nor a declaration under 37 CFR 1.132. As regards the content of these submissions as they may at all be applicable to the obviousness rejections, Exhibit "A" appears to be a review of the device and an enthusiastic endorsement, however it does not provide any substantive evidence of unexpected results associated with a combination, commercial success of the device, a long-felt need in the art and/or failure of others. Exhibit "B" appears to be a mention of a binding manufactured by the same concern, however this mention again fails to provide substantive evidence of unexpected results associated with a combination, commercial success of the device, a long-felt need in the art and/or failure of others, yet further still, there is not sufficient evidence that the device referred to in Exhibit "B" is even clearly the claimed device, with applicant apparently relying only on the use of the word "Auto" appearing in both exhibits in an attempt to link them. Exhibit "C" does not appear to be related to the claimed invention.

Conclusion

12. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for

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unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A response to this action should be mailed to:

Mail Stop _____
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450,

Or faxed to:

PTO Central Fax: 571-273-8300

F. VANAMAN
Primary Examiner
Art Unit 3618

/Frank B Vanaman/
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